

AMENDED IN ASSEMBLY AUGUST 16, 2010

AMENDED IN SENATE MAY 5, 2010

AMENDED IN SENATE APRIL 12, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1069

Introduced by Senator Pavley

(Principal coauthor: Assembly Member Fletcher)

(Coauthors: Senators Correa and Negrete McLeod)

February 17, 2010

An act to amend Section 3501 of, and to add Sections 3502.2, ~~3502.3, and 3528.5~~ and 3502.3 to, the Business and Professions Code, to amend Sections 44336, 49406, 49423, 49455, 87408, 87408.5, and 87408.6 of, and to add Section 49458 to, the Education Code, *and* to amend Section 2881 of the Public Utilities Code, ~~and to amend Section 2708 of the Unemployment Insurance Code,~~ relating to physician assistants.

LEGISLATIVE COUNSEL'S DIGEST

SB 1069, as amended, Pavley. Physician assistants.

Existing law, the Physician Assistant Practice Act, is administered by the Physician Assistant Committee of the Medical Board of California and provides for the licensure and regulation of physician assistants. Existing law provides that a physician assistant may perform the medical services that are set forth by the regulations of the board when the services are rendered under the supervision of a licensed physician and surgeon. Existing law requires a physician assistant and his or her supervising physician to establish written guidelines for the adequate supervision of the physician assistant. Existing law provides that those

requirements may be satisfied by adopting protocols for some or all of the tasks performed by the physician assistant, as specified.

This bill would provide that a physician assistant acts as the agent of the supervising physician when performing authorized activities, and would authorize a physician assistant to perform physical examinations and other specified medical services, as defined, and sign and attest to any document evidencing those examinations and other services, as required pursuant to specified provisions of law. The bill would further provide that a delegation of services agreement may authorize a physician assistant to order durable medical equipment, ~~certify disability, as specified,~~ and make arrangements with regard to home health services or personal care services. The bill would make conforming changes to provisions in the Education Code, ~~and the Public Utilities Code, and the Unemployment Insurance Code~~ with regard to the performance of those examinations and services and acceptance of those attestations. The bill would also authorize a physician assistant to perform a physical examination that is required for participation in an interscholastic athletic program, as specified.

~~Under existing law regarding administrative adjudication, a hearing to determine whether a license granted to a physician assistant shall be revoked, suspended, limited, or conditioned is initiated by filing an accusation. An accusation is a written statement of charges that sets forth in ordinary and concise language the acts or omissions with which a licensee is charged.~~

~~This bill would require an accusation against a physician assistant to be filed against the physician assistant within 3 years after the committee discovers, as defined, the act or omission alleged as the ground for disciplinary action, or within 7 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This statute of limitation would not apply to an accusation based on the procurement of a license by fraud or misrepresentation, or upon an allegation of unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee upon proof of specified facts. The bill would toll the limitations period in certain circumstances and would also establish a different time limit for an accusation alleging sexual misconduct by a licensee, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

(a) “Board” means the Medical Board of California.

(b) “Approved program” means a program for the education of physician assistants that has been formally approved by the committee.

(c) “Trainee” means a person who is currently enrolled in an approved program.

(d) “Physician assistant” means a person who meets the requirements of this chapter and is licensed by the committee.

(e) “Supervising physician” means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(f) “Supervision” means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

(g) “Committee” or “examining committee” means the Physician Assistant Committee.

(h) “Regulations” means the rules and regulations as set forth in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(i) “Routine visual screening” means noninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

(j) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

(k) “Delegation of services agreement” means the writing that delegates to a physician assistant from a supervising physician the medical services the physician assistant is authorized to perform consistent with subdivision (a) of Section 1399.540 of Title 16 of the California Code of Regulations.

1 (l) “Other specified medical services” means tests or
2 examinations performed or ordered by a physician assistant
3 practicing in compliance with this chapter or regulations of the
4 board promulgated under this chapter.

5 (m) A physician assistant acts as an agent of the supervising
6 physician when performing any activity authorized by this chapter
7 or regulations promulgated by the board under this chapter.

8 SEC. 2. Section 3502.2 is added to the Business and Professions
9 Code, to read:

10 3502.2. Notwithstanding any other provision of law, a physician
11 assistant may perform the physical examination and any other
12 specified medical services that are required pursuant to Section
13 2881 of the Public Utilities Code and Sections 44336, 49406,
14 49423, 49455, 87408, 87408.5, and 87408.6 of the Education Code,
15 practicing in compliance with this chapter, and may sign and attest
16 to any certificate, card, form, or other documentation evidencing
17 the examination or other specified medical services.

18 SEC. 3. Section 3502.3 is added to the Business and Professions
19 Code, to read:

20 3502.3. (a) Notwithstanding any other provision of law, in
21 addition to any other practices that meet the general criteria set
22 forth in this chapter or the board’s regulations for inclusion in a
23 delegation of services agreement, a delegation of services
24 agreement may authorize a physician assistant to do any of the
25 following:

26 (1) Order durable medical equipment, subject to any limitations
27 set forth in Section 3502 or the delegation of services agreement.
28 Notwithstanding that authority, nothing in this paragraph shall
29 operate to limit the ability of a third-party payer to require prior
30 approval.

31 ~~(2) After performance of a physical examination by the~~
32 ~~physician assistant under the supervision of a physician and~~
33 ~~surgeon consistent with this chapter, certify disability pursuant to~~
34 ~~Section 2708 of the Unemployment Insurance Code.~~

35 ~~(3)~~

36 (2) For individuals receiving home health services or personal
37 care services, after consultation with the supervising physician,
38 approve, sign, modify, or add to a plan of treatment or plan of care.

39 (b) Nothing in this section shall be construed to affect the
40 validity of any delegation of services agreement in effect prior to

1 the enactment of this section or those adopted subsequent to
2 enactment.

3 ~~SEC. 4. Section 3528.5 is added to the Business and Professions~~
4 ~~Code, to read:~~

5 ~~3528.5. (a) Except as provided in subdivisions (b), (c), (d),~~
6 ~~and (e), any accusation filed against a licensee pursuant to Section~~
7 ~~11503 of the Government Code shall be filed within three years~~
8 ~~after the committee discovers the act or omission alleged as the~~
9 ~~ground for disciplinary action, or within seven years after the act~~
10 ~~or omission alleged as the ground for disciplinary action occurs,~~
11 ~~whichever occurs first.~~

12 ~~(b) An accusation filed against a licensee pursuant to Section~~
13 ~~11503 of the Government Code alleging the procurement of a~~
14 ~~license by fraud or misrepresentation is not subject to the limitation~~
15 ~~provided for by subdivision (a).~~

16 ~~(c) An accusation filed against a licensee pursuant to Section~~
17 ~~11503 of the Government Code alleging unprofessional conduct~~
18 ~~based on incompetence, gross negligence, or repeated negligent~~
19 ~~acts of the licensee is not subject to the limitation provided for by~~
20 ~~subdivision (a) upon proof that the licensee intentionally concealed~~
21 ~~from discovery his or her incompetence, gross negligence, or~~
22 ~~repeated negligent acts.~~

23 ~~(d) If an alleged act or omission involves a minor, the 7-year~~
24 ~~limitations period provided for by subdivision (a) and the 10-year~~
25 ~~limitations period provided for by subdivision (c) shall be tolled~~
26 ~~until the minor reaches the age of majority. However, if the~~
27 ~~committee discovers an alleged act of sexual contact with a minor~~
28 ~~under Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code~~
29 ~~after the limitations periods described in this subdivision have~~
30 ~~otherwise expired, and there is independent evidence that~~
31 ~~corroborates the allegation, an accusation shall be filed within~~
32 ~~three years from the date the committee discovers that alleged act.~~

33 ~~(e) An accusation filed against a licensee pursuant to Section~~
34 ~~11503 of the Government Code alleging sexual misconduct shall~~
35 ~~be filed within 3 years after the committee discovers the act or~~
36 ~~omission alleged as the ground for disciplinary action, or within~~
37 ~~10 years after the act or omission alleged as the ground for~~
38 ~~disciplinary action occurs, whichever occurs first. This subdivision~~
39 ~~shall apply to a complaint alleging sexual misconduct received by~~
40 ~~the committee on and after January 1, 2011.~~

~~(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the committee due to an ongoing criminal investigation.~~

~~(g) For purposes of this section, “discovers” means the latest of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:~~

~~(1) The date the committee receives a complaint or report describing the act or omission.~~

~~(2) The date, subsequent to the original complaint or report, on which the committee becomes aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.~~

~~(3) The date the committee receives from the complainant a written release of information pertaining to the complainant’s diagnosis and treatment.~~

~~SEC. 5.~~

SEC. 4. Section 44336 of the Education Code is amended to read:

44336. When required by the commission, the application for a certification document or the renewal thereof shall be accompanied by a certificate in such form as shall be prescribed by the commission, from a physician and surgeon licensed under the provisions of the Business and Professions Code or a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, showing that the applicant is free from any contagious and communicable disease or other disabling disease or defect unfitting the applicant to instruct or associate with children.

~~SEC. 6.~~

SEC. 5. Section 49406 of the Education Code is amended to read:

49406. (a) Except as provided in subdivision (h), no person shall be initially employed by a school district in a certificated or classified position unless the person has submitted to an examination within the past 60 days to determine that he or she is free of active tuberculosis, by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or a physician assistant

1 practicing in compliance with Chapter 7.7 (commencing with
2 Section 3500) of Division 2 of the Business and Professions Code.
3 This examination shall consist of either an approved intradermal
4 tuberculin test or any other test for tuberculosis infection that is
5 recommended by the federal Centers for Disease Control and
6 Prevention (CDC) and licensed by the federal Food and Drug
7 Administration (FDA), which, if positive, shall be followed by an
8 X-ray of the lungs in accordance with subdivision (f) of Section
9 120115 of the Health and Safety Code.

10 The X-ray film may be taken by a competent and qualified X-ray
11 technician if the X-ray film is subsequently interpreted by a
12 physician and surgeon licensed under Chapter 5 (commencing
13 with Section 2000) of Division 2 of the Business and Professions
14 Code.

15 The district superintendent or his or her designee may exempt,
16 for a period not to exceed 60 days following termination of the
17 pregnancy, a pregnant employee from the requirement that a
18 positive intradermal tuberculin test be followed by an X-ray of the
19 lungs.

20 (b) Thereafter, employees who are test negative by either the
21 tuberculin skin test or any other test for tuberculosis infection
22 recommended by the CDC and licensed by the FDA shall be
23 required to undergo the foregoing examination at least once each
24 four years or more often if directed by the governing board upon
25 recommendation of the local health officer for so long as the
26 employee's test remains negative. Once an employee has a
27 documented positive test for tuberculosis infection conducted
28 pursuant to this subdivision which has been followed by an X-ray,
29 the foregoing examination is no longer required, and a referral
30 shall be made within 30 days of completion of the examination to
31 the local health officer to determine the need for followup care.

32 (c) After the examination, each employee shall cause to be on
33 file with the district superintendent of schools a certificate from
34 the examining physician and surgeon or physician assistant
35 showing the employee was examined and found free from active
36 tuberculosis. The county board of education may require, by rule,
37 that all their certificates be filed in the office of the county
38 superintendent of schools or shall require their files be maintained
39 in the office of the county superintendent of schools if a majority
40 of the governing boards of the districts within the county so petition

1 the county board of education, except that in either case a district
2 or districts with a common board having an average daily
3 attendance of 60,000 or more may elect to maintain the files for
4 its employees in that district. "Certificate," as used in this section,
5 means a certificate signed by the examining physician and surgeon
6 or physician assistant practicing in compliance with Chapter 7.7
7 (commencing with Section 3500) of Division 2 of the Business
8 and Professions Code or a notice from a public health agency or
9 unit of the American Lung Association that indicates freedom from
10 active tuberculosis. The latter, regardless of form, shall constitute
11 evidence of compliance with this section. Nothing in this section
12 shall prevent the governing board, upon recommendation of the
13 local health officer, from establishing a rule requiring a more
14 extensive or more frequent physical examination than required by
15 this section, but the rule shall provide for reimbursement on the
16 same basis as required in this section.

17 (d) This examination is a condition of initial employment and
18 the expense incident thereto shall be borne by the applicant unless
19 otherwise provided by rules of the governing board. However, the
20 board may, if an applicant is accepted for employment, reimburse
21 that person in a like manner prescribed in this section for
22 employees.

23 (e) The governing board of each district shall reimburse the
24 employee for the cost, if any, of this examination. The board may
25 provide for the examination required by this section or may
26 establish a reasonable fee for the examination that is reimbursable
27 to employees of the district complying with the provisions of this
28 section.

29 (f) At the discretion of the governing board, this section shall
30 not apply to those employees not requiring certification
31 qualifications who are employed for any period of time less than
32 a school year whose functions do not require frequent or prolonged
33 contact with pupils.

34 The governing board may, however, require an examination
35 described in subdivision (b) and may, as a contract condition,
36 require the examination of persons employed under contract, other
37 than those persons specified in subdivision (a), if the board believes
38 the presence of these persons in and around school premises would
39 constitute a health hazard to pupils.

1 (g) If the governing board of a school district determines by
2 resolution, after hearing, that the health of pupils in the district
3 would not be jeopardized thereby, this section shall not apply to
4 any employee of the district who files an affidavit stating that he
5 or she adheres to the faith or teachings of any well-recognized
6 religious sect, denomination, or organization and in accordance
7 with its creed, tenets, or principles depends for healing upon prayer
8 in the practice of religion and that to the best of his or her
9 knowledge and belief he or she is free from active tuberculosis. If
10 at any time there should be probable cause to believe that the affiant
11 is afflicted with active tuberculosis, he or she may be excluded
12 from service until the governing board of the employing district
13 is satisfied that he or she is not so afflicted.

14 (h) A person who transfers his or her employment from one
15 school or school district to another shall be deemed to meet the
16 requirements of subdivision (a) if that person can produce a
17 certificate which shows that he or she was examined within the
18 past four years and was found to be free of communicable
19 tuberculosis, or if it is verified by the school previously employing
20 him or her that it has a certificate on file which contains that
21 showing.

22 A person who transfers his or her employment from a private or
23 parochial elementary school, secondary school, or nursery school
24 to a school or school district subject to this section shall be deemed
25 to meet the requirements of subdivision (a) if that person can
26 produce a certificate as provided for in Section 121525 of the
27 Health and Safety Code that shows that he or she was examined
28 within the past four years and was found to be free of
29 communicable tuberculosis, or if it is verified by the school
30 previously employing him or her that it has a certificate on file
31 which contains that showing.

32 (i) Any governing board or county superintendent of schools
33 providing for the transportation of pupils under contract authorized
34 by Section 39800, 39801, or any other provision of law shall
35 require as a condition of the contract the examination for active
36 tuberculosis, as provided by subdivision (a), of all drivers
37 transporting these pupils, provided that private contracted drivers
38 who transport these pupils on an infrequent basis, not to exceed
39 once a month, shall be excluded from this requirement.

1 ~~SEC. 7.~~

2 *SEC. 6.* Section 49423 of the Education Code is amended to
3 read:

4 49423. (a) Notwithstanding Section 49422, any pupil who is
5 required to take, during the regular schoolday, medication
6 prescribed for him or her by a physician and surgeon or ordered
7 for him or her by a physician assistant practicing in compliance
8 with Chapter 7.7 (commencing with Section 3500) of Division 2
9 of the Business and Professions Code, may be assisted by the
10 school nurse or other designated school personnel or may carry
11 and self-administer prescription auto-injectable epinephrine if the
12 school district receives the appropriate written statements identified
13 in subdivision (b).

14 (b) (1) In order for a pupil to be assisted by a school nurse or
15 other designated school personnel pursuant to subdivision (a), the
16 school district shall obtain both a written statement from the
17 physician and surgeon or physician assistant detailing the name
18 of the medication, method, amount, and time schedules by which
19 the medication is to be taken and a written statement from the
20 parent, foster parent, or guardian of the pupil indicating the desire
21 that the school district assist the pupil in the matters set forth in
22 the statement of the physician and surgeon or physician assistant.

23 (2) In order for a pupil to carry and self-administer prescription
24 auto-injectable epinephrine pursuant to subdivision (a), the school
25 district shall obtain both a written statement from the physician
26 and surgeon or physician assistant detailing the name of the
27 medication, method, amount, and time schedules by which the
28 medication is to be taken, and confirming that the pupil is able to
29 self-administer auto-injectable epinephrine, and a written statement
30 from the parent, foster parent, or guardian of the pupil consenting
31 to the self-administration, providing a release for the school nurse
32 or other designated school personnel to consult with the health
33 care provider of the pupil regarding any questions that may arise
34 with regard to the medication, and releasing the school district and
35 school personnel from civil liability if the self-administering pupil
36 suffers an adverse reaction as a result of self-administering
37 medication pursuant to this paragraph.

38 (3) The written statements specified in this subdivision shall be
39 provided at least annually and more frequently if the medication,

1 dosage, frequency of administration, or reason for administration
2 changes.

3 (c) A pupil may be subject to disciplinary action pursuant to
4 Section 48900 if that pupil uses auto-injectable epinephrine in a
5 manner other than as prescribed.

6 ~~SEC. 8.~~

7 *SEC. 7.* Section 49455 of the Education Code is amended to
8 read:

9 49455. Upon first enrollment in a California school district of
10 a child at a California elementary school, and at least every third
11 year thereafter until the child has completed the eighth grade, the
12 child's vision shall be appraised by the school nurse or other
13 authorized person under Section 49452. This evaluation shall
14 include tests for visual acuity and color vision; however, color
15 vision shall be appraised once and only on male children, and the
16 results of the appraisal shall be entered in the health record of the
17 pupil. Color vision appraisal need not begin until the male pupil
18 has reached the first grade. Gross external observation of the child's
19 eyes, visual performance, and perception shall be done by the
20 school nurse and the classroom teacher. The evaluation may be
21 waived, if the child's parents so desire, by their presenting of a
22 certificate from a physician and surgeon, a physician assistant
23 practicing in compliance with Chapter 7.7 (commencing with
24 Section 3500) of Division 2 of the Business and Professions Code,
25 or an optometrist setting out the results of a determination of the
26 child's vision, including visual acuity and color vision.

27 The provisions of this section shall not apply to any child whose
28 parents or guardian file with the principal of the school in which
29 the child is enrolling, a statement in writing that they adhere to the
30 faith or teachings of any well-recognized religious sect,
31 denomination, or organization and in accordance with its creed,
32 tenets, or principles depend for healing upon prayer in the practice
33 of their religion.

34 ~~SEC. 9.~~

35 *SEC. 8.* Section 49458 is added to the Education Code, to read:

36 49458. When a school district or a county superintendent of
37 schools requires a physical examination as a condition of
38 participation in an interscholastic athletic program, the physical
39 examination may be performed by a physician and surgeon or
40 physician assistant practicing in compliance with Chapter 7.7

1 (commencing with Section 3500) of Division 2 of the Business
2 and Professions Code.

3 ~~SEC. 10.~~

4 *SEC. 9.* Section 87408 of the Education Code is amended to
5 read:

6 87408. (a) When a community college district wishes to
7 employ a person in an academic position and that person has not
8 previously been employed in an academic position in this state,
9 the district shall require a medical certificate showing that the
10 applicant is free from any communicable disease, including, but
11 not limited to, active tuberculosis, unfitting the applicant to instruct
12 or associate with students. The medical certificate shall be
13 submitted directly to the governing board by a physician and
14 surgeon licensed under the Business and Professions Code, a
15 physician assistant practicing in compliance with Chapter 7.7
16 (commencing with Section 3500) of Division 2 of the Business
17 and Professions Code, or a commissioned medical officer exempted
18 from licensure. The medical examination shall have been conducted
19 not more than six months before the submission of the certificate
20 and shall be at the expense of the applicant. A governing board
21 may offer a contract of employment to an applicant subject to the
22 submission of the required medical certificate. Notwithstanding
23 Section 87031, the medical certificate shall become a part of the
24 personnel record of the employee and shall be open to the employee
25 or his or her designee.

26 (b) The governing board of a community college district may
27 require academic employees to undergo a periodic medical
28 examination by a physician and surgeon licensed under the
29 Business and Professions Code, a physician assistant practicing
30 in compliance with Chapter 7.7 (commencing with Section 3500)
31 of Division 2 of the Business and Professions Code, or a
32 commissioned medical officer exempted from licensure, to
33 determine that the employee is free from any communicable
34 disease, including, but not limited to, active tuberculosis, unfitting
35 the applicant to instruct or associate with students. The periodic
36 medical examination shall be at the expense of the district. The
37 medical certificate shall become a part of the personnel record of
38 the employee and shall be open to the employee or his or her
39 designee.

~~SEC. 11.~~

SEC. 10. Section 87408.5 of the Education Code is amended to read:

87408.5. (a) When a community college district wishes to employ a retirant who is retired for service, and such person has not been previously employed as a retirant, such district shall require, as a condition of initial employment as a retirant, a medical certificate showing that the retirant is free from any disabling disease unfitting him or her to instruct or associate with students. The medical certificate shall be completed and submitted directly to the community college district by a physician and surgeon licensed under the Business and Professions Code, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or a commissioned medical officer exempted from licensure. A medical examination shall be required for the completion of the medical certificate. The examination shall be conducted not more than six months before the completion and submission of the certificate and shall be at the expense of the retirant. The medical certificate shall become a part of the personnel record of the employee and shall be open to the employee or his or her designee.

(b) The community college district that initially employed the retirant, or any district that subsequently employs the retirant, may require a periodic medical examination by a physician and surgeon licensed under the Business and Professions Code, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or a commissioned medical officer exempted from licensure, to determine that the retirant is free from any communicable disease unfitting him or her to instruct or associate with students. The periodic medical examination shall be at the expense of the community college district. The medical certificate shall become a part of the personnel record of the retirant and shall be open to the retirant or his or her designee.

~~SEC. 12.~~

SEC. 11. Section 87408.6 of the Education Code is amended to read:

87408.6. (a) Except as provided in subdivision (h), no person shall be initially employed by a community college district in an academic or classified position unless the person has submitted to

1 an examination within the past 60 days to determine that he or she
2 is free of active tuberculosis, by a physician and surgeon licensed
3 under Chapter 5 (commencing with Section 2000) of Division 2
4 of the Business and Professions Code or a physician assistant
5 practicing in compliance with Chapter 7.7 (commencing with
6 Section 3500) of Division 2 of the Business and Professions Code.
7 This examination shall consist of an approved intradermal
8 tuberculin test or any other test for tuberculosis infection
9 recommended by the federal Centers for Disease Control and
10 Prevention (CDC) and licensed by the federal Food and Drug
11 Administration (FDA), that, if positive, shall be followed by an
12 X-ray of the lungs.

13 The X-ray film may be taken by a competent and qualified X-ray
14 technician if the X-ray film is subsequently interpreted by a
15 physician and surgeon licensed under Chapter 5 (commencing
16 with Section 2000) of Division 2 of the Business and Professions
17 Code.

18 The district superintendent, or his or her designee, may exempt,
19 for a period not to exceed 60 days following termination of the
20 pregnancy, a pregnant employee from the requirement that a
21 positive intradermal tuberculin test be followed by an X-ray of the
22 lungs.

23 (b) Thereafter, employees who are skin test negative, or negative
24 by any other test recommended by the CDC and licensed by the
25 FDA, shall be required to undergo the foregoing examination at
26 least once each four years or more often if directed by the
27 governing board upon recommendation of the local health officer
28 for so long as the employee remains test negative by either the
29 tuberculin skin test or any other test recommended by the CDC
30 and licensed by the FDA. Once an employee has a documented
31 positive skin test or any other test that has been recommended by
32 the CDC and licensed by the FDA that has been followed by an
33 X-ray, the foregoing examinations shall no longer be required, and
34 referral shall be made within 30 days of completion of the
35 examination to the local health officer to determine the need for
36 followup care.

37 (c) After the examination, each employee shall cause to be on
38 file with the district superintendent a certificate from the examining
39 physician and surgeon or physician assistant showing the employee
40 was examined and found free from active tuberculosis.

1 “Certificate,” as used in this subdivision, means a certificate signed
2 by the examining physician and surgeon or physician assistant, or
3 a notice from a public health agency or unit of the American Lung
4 Association that indicates freedom from active tuberculosis. The
5 latter, regardless of form, shall constitute evidence of compliance
6 with this section.

7 (d) This examination is a condition of initial employment and
8 the expense incident thereto shall be borne by the applicant unless
9 otherwise provided by rules of the governing board. However, the
10 board may, if an applicant is accepted for employment, reimburse
11 the person in a like manner prescribed for employees in subdivision
12 (e).

13 (e) The governing board of each district shall reimburse the
14 employee for the cost, if any, of this examination. The board may
15 provide for the examination required by this section or may
16 establish a reasonable fee for the examination that is reimbursable
17 to employees of the district complying with this section.

18 (f) At the discretion of the governing board, this section shall
19 not apply to those employees not requiring certification
20 qualifications who are employed for any period of time less than
21 a college year whose functions do not require frequent or prolonged
22 contact with students.

23 The governing board may, however, require the examination
24 and may, as a contract condition, require the examination of
25 persons employed under contract, other than those persons
26 specified in subdivision (a), if the board believes the presence of
27 these persons in and around college premises would constitute a
28 health hazard to students.

29 (g) If the governing board of a community college district
30 determines by resolution, after hearing, that the health of students
31 in the district would not be jeopardized thereby, this section shall
32 not apply to any employee of the district who files an affidavit
33 stating that he or she adheres to the faith or teachings of any
34 well-recognized religious sect, denomination, or organization and
35 in accordance with its creed, tenets, or principles depends for
36 healing upon prayer in the practice of religion and that to the best
37 of his or her knowledge and belief he or she is free from active
38 tuberculosis. If at any time there should be probable cause to
39 believe that the affiant is afflicted with active tuberculosis, he or

1 she may be excluded from service until the governing board of the
2 employing district is satisfied that he or she is not so afflicted.

3 (h) A person who transfers his or her employment from one
4 campus or community college district to another shall be deemed
5 to meet the requirements of subdivision (a) if the person can
6 produce a certificate that shows that he or she was examined within
7 the past four years and was found to be free of communicable
8 tuberculosis, or if it is verified by the college previously employing
9 him or her that it has a certificate on file that contains that showing.

10 A person who transfers his or her employment from a private or
11 parochial elementary school, secondary school, or nursery school
12 to the community college district subject to this section shall be
13 deemed to meet the requirements of subdivision (a) if the person
14 can produce a certificate as provided for in Section 121525 of the
15 Health and Safety Code that shows that he or she was examined
16 within the past four years and was found to be free of
17 communicable tuberculosis, or if it is verified by the school
18 previously employing him or her that it has the certificate on file.

19 (i) Any governing board of a community college district
20 providing for the transportation of students under contract shall
21 require as a condition of the contract the examination for active
22 tuberculosis, as provided in subdivision (a), of all drivers
23 transporting the students, provided that privately contracted drivers
24 who transport the students on an infrequent basis, not to exceed
25 once a month, shall be excluded from this requirement.

26 (j) Examinations required pursuant to subdivision (i) shall be
27 made available without charge by the local health officer.

28 ~~SEC. 13.~~

29 *SEC. 12.* Section 2881 of the Public Utilities Code is amended
30 to read:

31 2881. (a) The commission shall design and implement a
32 program to provide a telecommunications device capable of serving
33 the needs of individuals who are deaf or hearing impaired, together
34 with a single party line, at no charge additional to the basic
35 exchange rate, to any subscriber who is certified as an individual
36 who is deaf or hearing impaired by a licensed physician and
37 surgeon, audiologist, or a qualified state or federal agency, as
38 determined by the commission, and to any subscriber that is an
39 organization representing individuals who are deaf or hearing
40 impaired, as determined and specified by the commission pursuant

1 to subdivision (e). A licensed hearing aid dispenser may certify
2 the need of an individual to participate in the program if that
3 individual has been previously fitted with an amplified device by
4 the dispenser and the dispenser has the individual's hearing records
5 on file prior to certification. In addition, a physician assistant may
6 certify the needs of an individual who has been diagnosed by a
7 physician and surgeon as being deaf or hearing impaired to
8 participate in the program after reviewing the medical records or
9 copies of the medical records containing that diagnosis.

10 (b) The commission shall also design and implement a program
11 to provide a dual-party relay system, using third-party intervention
12 to connect individuals who are deaf or hearing impaired and offices
13 of organizations representing individuals who are deaf or hearing
14 impaired, as determined and specified by the commission pursuant
15 to subdivision (e), with persons of normal hearing by way of
16 intercommunications devices for individuals who are deaf or
17 hearing impaired and the telephone system, making available
18 reasonable access of all phases of public telephone service to
19 telephone subscribers who are deaf or hearing impaired. In order
20 to make a dual-party relay system that will meet the requirements
21 of individuals who are deaf or hearing impaired available at a
22 reasonable cost, the commission shall initiate an investigation,
23 conduct public hearings to determine the most cost-effective
24 method of providing dual-party relay service to the deaf or hearing
25 impaired when using a telecommunications device, and solicit the
26 advice, counsel, and physical assistance of statewide nonprofit
27 consumer organizations of the deaf, during the development and
28 implementation of the system. The commission shall phase in this
29 program, on a geographical basis, over a three-year period ending
30 on January 1, 1987. The commission shall apply for certification
31 of this program under rules adopted by the Federal
32 Communications Commission pursuant to Section 401 of the
33 federal Americans with Disabilities Act of 1990 (Public Law
34 101-336).

35 (c) The commission shall also design and implement a program
36 whereby specialized or supplemental telephone communications
37 equipment may be provided to subscribers who are certified to be
38 disabled at no charge additional to the basic exchange rate. The
39 certification, including a statement of visual or medical need for
40 specialized telecommunications equipment, shall be provided by

1 a licensed optometrist, physician and surgeon, or physician
2 assistant, acting within the scope of practice of his or her license,
3 or by a qualified state or federal agency as determined by the
4 commission. The commission shall, in this connection, study the
5 feasibility of, and implement, if determined to be feasible, personal
6 income criteria, in addition to the certification of disability, for
7 determining a subscriber's eligibility under this subdivision.

8 (d) The commission shall establish a rate recovery mechanism
9 through a surcharge not to exceed one-half of 1 percent uniformly
10 applied to a subscriber's intrastate telephone service, other than
11 one-way radio paging service and universal telephone service,
12 both within a service area and between service areas, to allow
13 providers of the equipment and service specified in subdivisions
14 (a), (b), and (c), to recover costs as they are incurred under this
15 section. The surcharge shall be in effect until January 1, 2014. The
16 commission shall require that the programs implemented under
17 this section be identified on subscribers' bills, and shall establish
18 a fund and require separate accounting for each of the programs
19 implemented under this section.

20 (e) The commission shall determine and specify those statewide
21 organizations representing the deaf or hearing impaired that shall
22 receive a telecommunications device pursuant to subdivision (a)
23 or a dual-party relay system pursuant to subdivision (b), or both,
24 and in which offices the equipment shall be installed in the case
25 of an organization having more than one office.

26 (f) The commission may direct any telephone corporation subject
27 to its jurisdiction to comply with its determinations and
28 specifications pursuant to this section.

29 (g) The commission shall annually review the surcharge level
30 and the balances in the funds established pursuant to subdivision
31 (d). Until January 1, 2014, the commission shall be authorized to
32 make, within the limits set by subdivision (d), any necessary
33 adjustments to the surcharge to ensure that the programs supported
34 thereby are adequately funded and that the fund balances are not
35 excessive. A fund balance which is projected to exceed six months'
36 worth of projected expenses at the end of the fiscal year is
37 excessive.

38 (h) The commission shall prepare and submit to the Legislature,
39 on or before December 31 of each year, a report on the fiscal status
40 of the programs established and funded pursuant to this section

1 and Sections 2881.1 and 2881.2. The report shall include a
2 statement of the surcharge level established pursuant to subdivision
3 (d) and revenues produced by the surcharge, an accounting of
4 program expenses, and an evaluation of options for controlling
5 those expenses and increasing program efficiency, including, but
6 not limited to, all of the following proposals:

7 (1) The establishment of a means test for persons to qualify for
8 program equipment or free or reduced charges for the use of
9 telecommunication services.

10 (2) If and to the extent not prohibited under Section 401 of the
11 federal Americans with Disabilities Act of 1990 (Public Law
12 101-336), the imposition of limits or other restrictions on maximum
13 usage levels for the relay service, which shall include the
14 development of a program to provide basic communications
15 requirements to all relay users at discounted rates, including
16 discounted toll-call rates, and, for usage in excess of those basic
17 requirements, at rates which recover the full costs of service.

18 (3) More efficient means for obtaining and distributing
19 equipment to qualified subscribers.

20 (4) The establishment of quality standards for increasing the
21 efficiency of the relay system.

22 (i) In order to continue to meet the access needs of individuals
23 with functional limitations of hearing, vision, movement,
24 manipulation, speech and interpretation of information, the
25 commission shall perform ongoing assessment of, and if
26 appropriate, expand the scope of the program to allow for
27 additional access capability consistent with evolving
28 telecommunications technology.

29 (j) The commission shall structure the programs required by
30 this section so that any charge imposed to promote the goals of
31 universal service reasonably equals the value of the benefits of
32 universal service to contributing entities and their subscribers.

33 ~~SEC. 14. Section 2708 of the Unemployment Insurance Code~~
34 ~~is amended to read:~~

35 ~~2708. (a) (1) In accordance with the director's authorized~~
36 ~~regulations, and except as provided in subdivision (c) and Sections~~
37 ~~2708.1 and 2709, a claimant shall establish medical eligibility for~~
38 ~~each uninterrupted period of disability by filing a first claim for~~
39 ~~disability benefits supported by the certificate of a treating~~
40 ~~physician or practitioner that establishes the sickness, injury, or~~

1 pregnancy of the employee, or the condition of the family member
2 that warrants the care of the employee. For subsequent periods of
3 uninterrupted disability after the period covered by the initial
4 certificate or any preceding continued claim, a claimant shall file
5 a continued claim for those benefits supported by the certificate
6 of a treating physician or practitioner. A certificate filed to establish
7 medical eligibility for the employee's own sickness, injury, or
8 pregnancy shall contain a diagnosis and diagnostic code prescribed
9 in the International Classification of Diseases, or, where no
10 diagnosis has yet been obtained, a detailed statement of symptoms.

11 (2) A certificate filed to establish medical eligibility of the
12 employee's own sickness, injury, or pregnancy shall also contain
13 a statement of medical facts including secondary diagnoses when
14 applicable, within the physician's or practitioner's knowledge,
15 based on a physical examination and a documented medical history
16 of the claimant by the physician or practitioner, indicating the
17 physician's or practitioner's conclusion as to the claimant's
18 disability, and a statement of the physician's or practitioner's
19 opinion as to the expected duration of the disability.

20 (b) An employee shall be required to file a certificate to establish
21 eligibility when taking leave to care for a family member with a
22 serious health condition. The certificate shall be developed by the
23 department. In order to establish medical eligibility of the serious
24 health condition of the family member that warrants the care of
25 the employee, the information shall be within the physician's or
26 practitioner's knowledge and shall be based on a physical
27 examination and documented medical history of the family member
28 and shall contain all of the following:

29 (1) A diagnosis and diagnostic code prescribed in the
30 International Classification of Diseases, or, where no diagnosis
31 has yet been obtained, a detailed statement of symptoms.

32 (2) The date, if known, on which the condition commenced.

33 (3) The probable duration of the condition.

34 (4) An estimate of the amount of time that the physician or
35 practitioner believes the employee is needed to care for the child,
36 parent, spouse, or domestic partner.

37 (5) (A) A statement that the serious health condition warrants
38 the participation of the employee to provide care for his or her
39 child, parent, spouse, or domestic partner.

1 (B) “Warrants the participation of the employee” includes, but
2 is not limited to, providing psychological comfort, and arranging
3 “third party” care for the child, parent, spouse, or domestic partner,
4 as well as directly providing, or participating in, the medical care.

5 (e) The department shall develop a certification form for bonding
6 that is separate and distinct from the certificate required in
7 subdivision (a) for an employee taking leave to bond with a minor
8 child within the first year of the child’s birth or placement in
9 connection with foster care or adoption.

10 (d) The first and any continuing claim of an individual who
11 obtains care and treatment outside this state shall be supported by
12 a certificate of a treating physician or practitioner duly licensed
13 or certified by the state or foreign country in which the claimant
14 is receiving the care and treatment. If a physician or practitioner
15 licensed by and practicing in a foreign country is under
16 investigation by the department for filing false claims and the
17 department does not have legal remedies to conduct a criminal
18 investigation or prosecution in that country, the department may
19 suspend the processing of all further certifications until the
20 physician or practitioner fully cooperates, and continues to
21 cooperate with the investigation. A physician or practitioner
22 licensed by and practicing in a foreign country who has been
23 convicted of filing false claims with the department may not file
24 a certificate in support of a claim for disability benefits for a period
25 of five years.

26 (e) For purposes of this part:

27 (1) “Physician” has the same meaning as defined in Section
28 3209.3 of the Labor Code.

29 (2) “Practitioner” means a person duly licensed or certified in
30 California acting within the scope of his or her license or
31 certification who is a dentist, podiatrist, physician assistant, or as
32 to normal pregnancy or childbirth, a midwife, nurse midwife, or
33 nurse practitioner.

34 (f) For a claimant who is hospitalized in or under the authority
35 of a county hospital in this state, a certificate of initial and
36 continuing medical disability, if any, shall satisfy the requirements
37 of this section if the disability is shown by the claimant’s hospital
38 chart, and the certificate is signed by the hospital’s registrar. For
39 a claimant hospitalized in or under the care of a medical facility
40 of the United States government, a certificate of initial and

1 continuing medical disability, if any, shall satisfy the requirements
2 of this section if the disability is shown by the claimant's hospital
3 chart, and the certificate is signed by a medical officer of the
4 facility duly authorized to do so.

5 (g) Nothing in this section shall be construed to preclude the
6 department from requesting additional medical evidence to
7 supplement the first or any continued claim if the additional
8 evidence can be procured without additional cost to the claimant.
9 The department may require that the additional evidence include
10 any or all of the following:

11 (1) Identification of diagnoses.

12 (2) Identification of symptoms.

13 (3) A statement setting forth the facts of the claimant's disability.
14 The statement shall be completed by any of the following
15 individuals:

16 (A) The physician or practitioner treating the claimant.

17 (B) The registrar, authorized medical officer, or other duly
18 authorized official of the hospital or health facility treating the
19 claimant.

20 (C) An examining physician or other representative of the
21 department.